or subtract from the area affected by putting up or taking down lamp-posts. That lamp-posts and direction are both questions of fact. This ingenious argument (as to the soundness of which I reserve my opinion until necessary) lets in the argument that if the direction is a fact it must be proved, which it was not.

For this reason the appeal must be allowed and the convictions quashed.

Appeal allowed.

LIM PENG KOI v. REX.

[App. Crim. Juris. (Murray-Aynsley, C. J.)
March 6, 1951]

[Singapore — Magistrate's Appeal No. 101 of 1950]

Evidence Ordinance s. 33 — When evidence taken in a judicial proceedings can be used in a subsequent judicial proceedings — Delay and expense which the Court consider unreasonable.

In this case the appellant had been convicted and sentenced to six months rigorous imprisonment. The only evidence of the crucial facts in issue was given at a prior judicial proceedings which the prosecution sought to use under section 33 of the Evidence Ordinance. This evidence was strongly challenged by the defence. When the evidence was originally taken certain matters which should not have been admitted were let in. The trial was begun again before another District Judge and the evidence then put in under the provisions of section 33 of the Evidence Ordinance was not the evidence originally given but an expurgated version compiled by the Police Officer and Counsel who at that stage represented the appellant.

Held, (1) that in determining when the delay and expense is unreasonable under section 33 of the Evidence Ordinance the Court must take into consideration the seriousness of the charge, whether it is one for which the accused is likely to be sentenced to imprisonment or not, and the character of the evidence whether the evidence is challenged by the defence or is of a purely formal character; (2) that in this case the trial is not satisfactory and therefore there must be a new trial.

MAGISTRATE'S APPEAL.

M. B. Brash for the appellant.

A. V. Winslow (D.P.P.) for the Crown.

Murray-Aynsley, C.J. : — This case raised a question as to the application of section 33 of the Evidence Ordinance. The section reads as follows :—

"33. Evidence given by a witness in a judicial proceeding, or before any person authorized by law to take it, is relevant for the purpose of proving in a subsequent judicial proceeding, the truth of the facts which it states, when the witness is dead or cannot be found or is incapable of giving evidence, or is kept out of the way by the adverse party, or if his presence cannot be obtained without an amount of delay or expense which under the circumstances of the case the Court considers unreasonable:

Provided

that the proceeding was between the same parties or their representatives in interest;

that the adverse party in the first proceeding had the right and opportunity to cross-examine;

that the questions in issue were substantially the same in the first as in the second proceeding."

Here we have to consider the meaning of the words "without an amount of . . . . expense which under the circumstances of the case the Court considers unreasonable". To determine when the expense is unreasonable is not a matter in which absolute standards can be applied. In particular two things are of importance; the seriousness of the charge and the character of the evidence. On the first point, in particular, it should be regarded as a very serious matter to allow evidence given on another occasion to be read when a person is charged with an offence for which he is likely to be sentenced to imprisonment. On the second it may be that the evidence given is not challenged by the defence and it may be evidence of a purely formal character.

In the present case the appellant was convicted and sentenced to six months rigorous imprisonment. The evidence was also the only evidence of the crucial facts in issue and it was very strongly challenged by the defence. A further difficulty arose from the fact that when the evidence was originally given certain matters which should not have been admitted were let in. The trial was begun again before another District Judge and the evidence then put in under the provisions of the section in question was not the evidence as originally given but an expurgated version compiled by the Police Officer and counsel who at that stage represented the appellant. I do not see that there is any legal justification for this proceeding, but by itself it might not in the circumstances be of sufficient importance to justify quashing the conviction. Although at the time no objection was taken by the gentlemen who then represented the appellant, I cannot consider the trial as satisfactory and I, therefore, ordered a new trial.

Retrial ordered.

MUHAMED ABDUL RAHMAN v. REX.

[App. Crim. Juris. (Murray-Aynsley, C. J.)
March 7, 1951]

[Singapore — Magistrate's Appeal No. 158 of 1950]

Price Control Ordinance (No. 6 of 1950), s. 9 — "Business in the course of which price-regulated goods are normally sold" — Meaning of.

The words "business in the course of which price-regulated goods are normally sold" mean that price-regulated goods are normally sold in that particular business, not in similar business.

MAGISTRATE'S APPEAL.

D. S. Marshall for the appellant.

A. V. Winslow (D.P.P.) for the Crown.

Murray-Aynsley, C.J.: — This appeal raises a short point on the interpretation of section 9 of the Price Control Ordinance (No. 6 of 1950).

The section reads as follows:—

"9. Any person carrying on a business in the course of which price-regulated goods are normally sold and who has in his possession a stock of such goods, who —

(a) falsely denies that he has such goods in his possession, or

(b) refuses, except with the permission of the Price Controller, to sell such goods in reasonable quantities.

shall be guilty of an offence against this Ordinance.

Provided that it shall be a good defence to a charge under paragraph (b) of this section that the accused had reasonable grounds for believing that the purchaser was unable or unwilling to make immediate payment of the price of such goods in cash."

It appears that the appellant carries on a business described by the prosecution as a sundry goods shop. It appears that provisions of certain kinds are sold there. There is no evidence that sugar or any other price-regulated goods were ever sold there. The appellant denied that he ever sold sugar. It was contended on behalf of the prosecution that it was sufficient if sugar was normally sold in shops of that kind.

I do not agree. In my opinion the words "business in the course of which price-regulated goods are normally sold" mean that price-regulated goods are normally sold in that particular business, not in similar businesses. In any event there does not seem to have been any evidence as to what similar types of business normally sold.

The appeal must be allowed. The fines (if paid) to be refunded and also the proceeds of sale of the sugar.

Appeal allowed.

KWAH LENG KIAH AND 2 OTHERS v. REX.

[App. Crim. Juris. (Murray-Aynsley, C. J.) March 6, 1951]

[Singapore — Magistrate's Appeal No. 170 of 1950]

Food Control Ordinance (No. 41 of 1949), s. 10 — Price Control Ordinance (No. 6 of 1950) 9.

In this case the appellants were charged with (1) concealing with intent to withhold a controlled article, to wit, sugar, thereby contravening section 10 of the Food Control Ordinance and (2) alternatively falsely denying that they had price-regulated goods in their possession and thereby committing an offence under section 9 of the Price Control Ordinance. It appeared that some sugar was found on the premises of the appellants in circumstances that justified the finding that it was concealed. It also appeared that the first appellant had acquired sugar for sale by retail before sugar became a controlled article. There was no direct evidence as to the purpose of the concealment and the court was asked to draw the necessary inference.

Held, that the court could not in the circumstances draw the inference that the sugar was concealed in order to withhold it from the market. Conviction quashed.

MAGISTRATE'S APPEAL.

N. N. Leicster for the appellants.

A. V. Winslow (D.P.P.) for the Crown.

Murray-Aynsley, C.J. : — This case raises a short point under section 10 of the Food Control Ordinance (No. 41 of 1949).

It appeared that some sugar was found on the premises of the appellant in circumstances that justified the finding that it was concealed. It also appeared that the first appellant had acquired sugar for sale by retail but that at the time of the seizure by reason of the fact that he was not a licensed dealer he could not legally sell the sugar in question either by wholesale or by retail. There was no direct evidence as to the purpose of the concealment and the Court was asked to draw the necessary inference. In my opinion the Court could not in the circumstance draw the inference that the sugar was concealed in order to withhold it from the market. In the circumstances I quashed the conviction.

Appeal allowed.

CHONG CHOO NEO (m.w.) v. SEM THYE TONG PAWNSHOP.

[Orig. Civ. Juris. (Brown, J.) March 20, 1951]

[Singapore — Civil Suit No. 87 of 1950]

Debtor and Creditor (Occupation Period) Ordinance, s. 6 — Occupation debt — Meaning of.

The plaintiff in this case sued the defendants for the balance of amount due on a deposit receipt dated 6th July 1943. The deposit receipt read as follows:—

" SINGAPORE SEM THYE PAWNSHOP.

A deposit of $2,000/- is hereby received from Madam Chong Choo Neo and it is agreed that the monthly interest for every $100/- shall be 70 cents.

(No interest for fraction of a month).

This money is for a period of six months, on expiration of which period full payment shall be made on presentation of this document.

Lest words of mouth bear no evidence, this document is executed as proof."

The defendants pleaded that the plaintiff did not at any time prior to the 12th day of August 1945 demand the repayment of the said deposit either within the said period of six months or at any time thereafter and relied on section 6 of the Debtor and Creditor (Occupation Period) Ordinance.